

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KYLE AVERY WITEK,

Plaintiff

v.

Case No. 2:17-cv-13647  
District Judge Arthur J. Tarnow  
Magistrate Judge Anthony P. Patti

HEIDI E. WASHINGTON,  
ERIC BALCARCEL,  
BARBARA A. ANDERSON,  
M. ZAMORA and  
KAREN C. DELBEKE,

Defendants.

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**ORDER GRANTING AS UNOPPOSED DEFENDANT DELBEKE'S  
MOTION TO COMPEL PLAINTIFF'S MEDICAL RECORDS (DE 18) and  
DEFENDANT ANDERSON'S MOTION TO COMPEL SIGNED RELEASE  
OF MEDICAL RECORDS (DE 20)**

**A. Introduction**

Plaintiff Kyle Avery Witek is currently incarcerated at the MDOC's St. Louis Correctional Facility (SLF). On November 6, 2017, while incarcerated at SLF, Plaintiff filed the instant lawsuit *in pro per* against five defendants. (DE 1 at 2-5.) His claims are based, at least in part, upon the alleged treatment he is receiving, or the lack thereof, and the Eighth Amendment. (DE 1 at 6, 8-10.) He attaches 18 exhibits to his complaint. (DE 1 at 39-98.)

Plaintiff is proceeding *in forma pauperis*. (DEs 2-3.) By way of the Court's December 15, 2017 opinion and order, Judge Tarnow dismissed with prejudice Plaintiff's claims against Defendants Heidi E. Washington (MDOC Director), Erick Balcarcel (Acting Warden), and M. Zamora (Healthcare Unit Manager) but directed service of the complaint upon the remaining Defendants – Registered Dietician Barbara A. Anderson and Nurse Practitioner Karen C. Delbeke. (DE 5, DE 1 at 4-5.) Defendants Delbeke and Anderson have since appeared via counsel. (DEs 9, 10, 16.)

### **B. Pending Matters**

Judge Tarnow has referred this case to me for pretrial matters. Currently before the Court are: (1) Defendant Delbeke's April 4, 2018 motion to dismiss for failure to exhaust administrative remedies, regarding which a timely response and a reply have been filed; (2) Defendant Delbeke's May 11, 2018 motion to compel Plaintiff's medical records; and, (3) Defendant Anderson's May 14, 2018 motion to compel signed release of medical records, regarding which Defendant Anderson has also filed the affidavit of an SLF Health Information Manager.

### **C. Discussion**

“A respondent opposing a motion must file a response, including a brief and supporting documents then available.” E.D. Mich. LR 7.1(c)(1). “A response to a nondispositive motion must be filed within 14 days after service of the motion.”

E.D. Mich. 7.1(e)(2)(B). Thus, in the absence of an order stating otherwise, Plaintiff's responses to the motions to compel were due on or about Monday, May 28, 2018 and Thursday, May 31, 2018, respectively.

To date, Plaintiff has failed to file a response to either of the motions to compel. As such, they are deemed unopposed.

#### **D. Order**

Accordingly, Defendant Delbeke's motion to compel Plaintiff's medical records (DE 18) is **GRANTED**. No later than **June 29, 2018**, Plaintiff shall provide Defendant Delbeke's counsel with a signed and witnessed "Patient's Authorization for Disclosure of Health Information." (See DE 18-1 at 4).

Likewise, Defendant Anderson's motion to compel signed release of medical records (DE 20) is **GRANTED**. No later than **June 29, 2018**, Plaintiff shall provide Defendant Anderson's counsel with a signed and witnessed "Patient's Authorization for Disclosure of Health Records." (See DE 21 at 5).

**IT IS SO ORDERED.**

Dated: June 13, 2018

s/*Anthony P. Patti*

Anthony P. Patti  
UNITED STATES MAGISTRATE JUDGE

### **Certificate of Service**

I hereby certify that a copy of the foregoing document was sent to parties of record on June 13, 2018, electronically and/or by U.S. Mail.

s/Michael Williams

Case Manager for the  
Honorable Anthony P. Patti